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In the Supreme Court of the State of Idaho

FORD ELSAESSER, in his capacity as Personal
Representative of the Estate of Victoria H. Smith,

Plaintiff-Respondent,

vs.

LAW OFFICE OF VERNON K. SMITH, LLC, an
Idaho limited liability company; VERNON K.
SMITH LAW, PC, an Idaho professional service
corporation,

Defendants-Appellants.

Supreme Court Docket No. 48132-2020

RESPONDENT'S BRIEF

**Appeal from the District Court of the Fourth Judicial District of
The State of Idaho, in and for the County of Ada,
Honorable Michael Reardon, Presiding**

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RESPONDENT'S BRIEF

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I. STATEMENT OF THE CASE

COMES NOW Plaintiff-Respondent Ford Elsaesser (“Elsaesser” or the “PR”),¹ in his capacity as the personal representative of the Estate of Victoria H. Smith (the “Estate”) and hereby submits this Respondent’s Brief.

A. Nature of the Case.

The facts of this appeal are undisputed and established in the pleadings. For example, it is not disputed that Defendants-Appellants Vernon K. Smith, LLC and Vernon K. Smith Law, PC (collectively the “Law Firm”)² occupies a portion of Estate-owned property referred to herein as the “Law Office.” Nor is it disputed that the Law Firm does not have the PR’s permission to possess the same. Consequently, the PR, on behalf of the Estate, demanded that the Law Firm remove itself and its belongings from the Law Office. The Law Firm refused.

As a result, the PR filed a complaint, seeking ejectment and other relief. After briefing and oral argument, Judge Reardon correctly concluded that the PR proved the elements of ejectment. The District Court then issued a Judgment (and corresponding Writ of Assistance), ejecting the Law Firm from the Law Office. Judge Reardon later amended the Judgment so that it was certified as final, pursuant to I.R.C.P. 54(b).

¹ Mr. Elsaesser recently succeeded the previous Personal Representative Noah G. Hillen (“Hillen”). Because Hillen was the Personal Representative of the Estate at all times material to the lower court proceedings and because Mr. Elsaesser has stepped directly into Hillen’s shoes as the Personal Representative, this brief will use the term “PR” to refer to the Personal Representative of the Estate at the operative time, be it Elsaesser or Hillen.

² Vernon K. Smith, LLC was converted into Vernon K. Smith Law, PC, resulting in a single entity. Answer to Verified Complaint (filed December 16, 2019) (“Answer”) at 4, “Third Defense.” (R. 27).

The Law Firm, through its counsel Vernon K. Smith, Jr. (“Vernon”), appealed. The Law Firm—but mostly Vernon—claims the Estate, acting through the PR, lacks the authority to eject an unwanted party from Estate-owned property. Cutting through the Law Firm’s/Vernon’s irrelevant and incorrect facts and points, the disposition of this appeal amounts to a single issue: does the PR have the authority, as a personal representative, to eject an unwanted party from Estate property. The PR does (and did) and asks that this Court AFFIRM.

B. Course of Proceedings.

1. The Estate Case.

While not strictly relevant to this matter—or necessary to decide it—the PR offers a brief background regarding how we got where we are currently. For the Court’s convenience, the PR notes that this section, and in fact much of this brief, is substantially the same as the similar sections filed by the PR in his Respondent’s Briefs in Supreme Court Docket No. 47687-2020 (the “Gibson Case”) as well as Supreme Court Docket No. 47884-2020 (the “Vernon III Case”), both of which are presently pending before this Court.

Victoria H. Smith (“Victoria”), Vernon’s mother, died in 2013. *Matter of Estate of Smith*, 164 Idaho 457, 463, 432 P.3d 6, 12 (2018). After Victoria’s death, Judge Copsey, who is presiding over Victoria’s probate proceeding (the “Estate Case”): (1) invalidated Victoria’s will as the product of undue influence by Vernon; and (2) set aside a series of transactions by which Vernon transferred all of Victoria’s property to himself or entities controlled by him. *Id.* at 465-66, 432 P.3d at 14-15. After issuing these rulings, Judge Copsey appointed Hillen as personal representative of the Estate, and entered a judgment, pursuant to Idaho Rule of Civil

Procedure 70(b), which, for present purposes, vested title to the Law Office in the PR. (R. 159-160).³ That Judgment is referred to herein as the “Rule 70 Judgment.”

Vernon appealed the invalidation of the will, the decision to set aside the property transfers, and the Rule 70 Judgment. *Matter of Estate of Smith, supra*. As part of that appeal, this Court considered “any matters occurring up to and including the post-trial judgment under Rule 70(b).” *Id.* at 466, 432 P.3d at 15. After such consideration, this Court concluded that “the decisions of the magistrate court are affirmed.” *Id.* at 482, 432 P.3d at 31.

2. This Ejectment Action.

As a part of Estate administration, the PR—Hillen at the time—sought to remove the Law Firm from the Law Office. In so doing, the PR filed this action by submitting a complaint and asserting claims for ejectment (Count One), declaratory judgment/quiet title (Count Two), trespass (Count Three), and unjust enrichment (Count Four). Each claim stems from the fact that the Law Firm refuses to vacate the Law Office and has not paid remuneration for its occupancy. (R. 6-23).

The Law Firm filed its Answer on December 16, 2019. (R. 24-51).

3. The PR’s Motion for Judgment on the Pleadings.

After the pleadings closed, the PR moved for: (1) partial judgment on the pleadings as to Count One for ejectment; (2) entry of a Writ of Assistance to effectuate the Judgment; and (3) certification of the Judgment, if entered, as final under I.R.C.P. 54(b) (the

³ For ease of reading, references to the Clerk’s Record on Appeal in this Brief are designated by “R.” followed by the page numbers cited with preceding zeros eliminated.

PR's "Motion"). (R. 52-54). The PR filed the Motion and memorandum in support on March 26, 2020. (R. 52-65), together with a Declaration in Support of Motion for Partial Judgment on the Pleadings and Motion to Certify Judgment Under I.R.C.P. 54(b) (the "Declaration"). (R. 66-69). The PR's Declaration was filed to support the need for a Writ of Assistance and/or final certification if the PR's Motion was granted. (R. 63, n.7).

The Law Firm opposed the Motion. In its April 30, 2020, response, the Law Firm raised arguments largely coextensive with the claims raised in its Opening Brief to this Court (the "Opening Brief"). (R. 78-101); *compare* (R. 78-101) *with* the Opening Brief. The Law Firm argues that: (1) this Court had not upheld the Rule 70 Judgment (R. 93-96); (2) Vernon was, and is, the owner of the Law Office via his status as an heir (*e.g.* R. 83-85); (3) Hillen, as the personal representative of the Estate at the time, lacked the power to eject a tenant from Estate property unless necessary to satisfy an Estate creditor (R. 84-89, 95, 99-100); and (4) the Law Firm was not in possession of the Law Office, but instead was merely using the Law Office through Vernon. (R. 82).

4. Judge Reardon's Ruling and Judgment of Ejectment Against the Law Firm.

On May 5, 2020, Judge Reardon heard oral argument from the parties on the Motion. (R. 160). After taking the matter under advisement, Judge Reardon: (1) issued a Decision and Order on Motion for Partial Judgment on the Pleadings and Motion to Certify Judgment Under I.R.C.P. 54(b) (R. 159-164, the "Order"); and (2) entered a Judgment ejecting the Law Firm from the Law Office (the "Judgment"). (R. 165-166). Because the Judgment was

inadvertently missing a certificate of finality under Rule 54(b) of the Idaho Rules of Civil Procedure, Judge Reardon issued an Amended Judgment on July 9, 2020, which was the same as the Judgment but included a Rule 54(b) certificate of finality. (R. 193-195).

5. The Order Invalidated Most of the Law Firm’s Claims on Appeal.

Judge Reardon’s Order concludes that the elements of ejectment had been met: (1) Hillen, as the personal representative of the Estate at the time, had sufficient ownership interest to eject Vernon III from Estate property; (2) the Law Firm was in possession of the Law Office; and (3) the Law Firm refused to surrender possession of the Law Office. (R. 160-162).

Judge Reardon also directly addressed many of the claims presented by the Law Firm on this appeal. For example, Judge Reardon pointed out that the ownership element of ejectment was established by statute (I.C. § 15-3-711) and also independently by the Rule 70 Judgment. (R. 161). As to the PR’s statutory power over Estate property like the Law Office, Judge Reardon noted that the personal representative of an estate has the same power over estate property as that of an absolute owner. (R. 161 (quoting I.C. § 15-3-711)).

In the Rule 70 Judgment, Judge Reardon recognized that the Law Firm’s pleadings were a thinly veiled collateral attack on the Rule 70 Judgment and that such collateral attacks are not allowed. (R. 161). Finally, on the Law Firm’s claim that it was not occupying the Law Office but rather just using it, Judge Reardon found that the Law Firm did “not support this claim with any further argument or authority for the [District] Court to consider[.]” and that the Law firm was “in possession of the Law Office by virtue of physical occupancy or control” (R. 161).

The Law Firm first filed a notice of appeal on June 24, 2020, which was conditionally dismissed because there was no certificate of finality in the Judgment. (R. 176-192). After the Amended Judgment was entered, the Law Firm filed its Notice of Appeal on July 9, 2020 (R. 196-209), and submitted the Opening Brief on October 20, 2020. The Opening Brief raises few, if any, arguments that were not directly and correctly considered and dismissed by Judge Reardon below. The Law Firm's arguments still have no merit.

C. Statement of Facts.

The facts necessary for this Court to uphold Judge Reardon's Amended Judgment and Order are simple and undisputed. Prior to Victoria's death, she owned real property, including the Law Office. (R. 159-160). Following Victoria's death, Judge Copsey, in the Estate Case, appointed Hillen as the personal representative of the Estate and issued the Rule 70 Judgment, which, in part, conveyed the Law Office to the PR. (R. 159-160). The Law Firm currently occupies the Law Office. (R. 161). Despite demand from the PR to vacate, the Law Firm refuses to surrender possession of the Law Office. (R. 161).

That's it. Those are the only facts relevant to Judge Reardon's Amended Judgment and are all that need be considered by this Court. Despite this, the Law Firm goes on for page after page, asserting "facts" that are irrelevant or untrue or both. The PR asks that this Court ignore the Statement of Facts in the Opening Brief, which comprises little more than *ad-hominem* gripes with Hillen in his capacity as the former PR. Opening Brief at 8-12. The facts described in the Law Firm's Statement of Facts are not supported by the record and the entire section is devoid of even a single record citation. Opening Brief at 7-11.

II. SUMMARY OF ARGUMENT

The only true issue to be considered by this Court is whether the personal representative of the Estate has sufficient power over Estate property to eject the Law Firm therefrom. Hillen had—and the PR does have—that power as correctly concluded by Judge Reardon. The Law Firm’s arguments to the contrary reflect an incorrect understanding of Idaho’s Uniform Probate Code. Judge Reardon’s Order and Amended Judgment were correct and the Law Firm has failed to show otherwise.

III. STANDARDS OF REVIEW

The standard of review applicable to lower courts’ rulings on motions for judgment on the pleadings is the same as that for motions for summary judgment. *Trimble v. Engelking*, 130 Idaho 300, 302, 939 P.2d 1379, 1381 (1997) (“Thus, the standard of review applicable to lower courts’ rulings on motions for summary judgment also applies to motions for judgment on the pleadings.”). “[W]here the record reveals no issues of disputed fact, the question is one of law . . . over which this Court exercises free review.” *Id.*

IV. ARGUMENT

A. The District Court Correctly Determined that the PR Proved the Three Elements of Ejection.

“An action for ‘[e]jection requires proof of (1) ownership, (2) possession by the defendants, and (3) refusal of the defendants to surrender possession.’” *PHH Mortg. Servs. Corp. v. Pereira*, 146 Idaho 631, 637, 200 P.3d 1180, 1186 (2009) (quoting *Ada County Highway District v. Total Success Investments, LLC*, 145 Idaho 360, 369, 179 P.3d 323, 332 (2008)).

The third element of ejectment is conceded by the Law Firm, so only the first two elements-- ownership, and possession by the Law Firm--are at issue here. Order at 6 (R. 161); (R 8, 40 (“Defendants operate within the [Law Office] through the 2/3s titled owner, [Vernon], who has neither vacated nor surrendered possession . . . [and who] intends to remain there to protect and preserve his interest. . . .”). As correctly decided by Judge Reardon, the PR owns the Law Office sufficiently to prove the ownership element of ejectment for several different reasons and the Law Firm was and is in possession of the Law Office. Each point is addressed in turn below.

1. The Personal Representative of the Estate is the Owner of the Law Office and/or Enjoys the Same Power as That of An Owner.

As found by Judge Reardon, “the Rule 70(b) Judgment ‘vest[s] in the Personal Representative as of May 5, 2017, any and all real property of any kind . . . free and clear of any lien, claim, or interest of [Vernon K. Smith Jr.].’” Order at 3 (R. 161 (quoting Rule 70 Judgment)). The Rule 70 Judgment is unambiguous and vests all right, title, and interest in the Law Office to the PR. The Rule 70 Judgment is a valid judgment, lawfully issued by a court of competent jurisdiction. It has not been overturned or successfully challenged. It is the law.

Beyond that—and what makes the Law Firm’s repetitive arguments frivolous—is the fact that this Court directly considered and upheld the Rule 70 Judgment. *Matter of Estate of Smith*, 164 Idaho 457, 463, 432 P.3d 6, 12 (2018). The opening paragraph of this Court’s decision in *Smith* states that Vernon appealed from decisions of the magistrate court “and a corresponding judgment entered pursuant to Idaho Rule of Civil Procedure 70(b) [the Rule 70

Judgment]. We affirm the decisions of the magistrate court.” 164 Idaho at 463, 432 P.3d at 12. Given the ruling in *Smith*, the PR undisputedly owns the Law Office and can assert all powers associated with such ownership.⁴

But—and this is significant—even if the Rule 70 Judgment was somehow ineffective, this is immaterial since the PR has the power over the Law Office as that of an absolute owner, including the ability to eject the Law Firm therefrom. Idaho’s Uniform Probate Code provides personal representatives with “the same power over the title to property of the estate *that an absolute owner would have*, in trust however, for the benefit of the creditors and others interested in the estate.” I.C. § 15-3-711 (emphasis added). An absolute owner would unquestionably have the power to eject an unwanted party from the owner’s property. Therefore,

~~Heard~~ PR

does have, the power to eject the Law Firm from Estate property.

⁴ The Law Firm falsely claims that the enforceability of the Rule 70 Judgment was not presented to this Court in the *Smith* case. Opening Brief at 28. If the Law Firm’s counsel (and principal) were uninvolved with the *Smith* case, the misstatement may be attributable to a simple mistake, but of course Vernon himself brought the appeal resulting in the *Smith* decision, in which Vernon expressly invited this Court to address the issue he now claims was not presented. “Vernon respectfully requests this Court reverse the court’s Order Granting Partial Summary Judgment upon the 2012 Transfers, *together with the June 2, 2017 Judgment on Motion Under Rule 70(b)* of the Idaho Rules of Civil Procedure.” Appellant’s Opening Brief (filed February 12, 2018), *Matter of Estate of Smith*, 2018 WL 2103594 (Idaho) at 2-3 (emphasis added). Additional instances of Vernon’s express requests for this Court to consider and reverse the Rule 70 Judgment can be found at pages 20 and 44 of his Appellant’s Opening Brief, as well as page 35 of his Reply Brief (2018 WL 2462977). To make matters worse, Vernon continues to assert this fact despite the PR raising its falsity in the Gibson Case and the Vernon III Case pending before this Court.

Along those same lines, Idaho Code Section § 15-3-709 expressly provides that personal representatives “may maintain an action to recover possession of [estate] property or to determine the title thereto.” I.C. § 15-3-709. This ejectment action is an action to recover possession of Estate property, and the PR is statutorily enabled to maintain this action. To find otherwise would require this Court to invalidate multiple sections of the Idaho Code. It should not do so. Upholding Judge Reardon’s Order and the Amended Judgment is the only legally sound conclusion. Because the three elements of ejectment are met here for multiple distinct reasons, the Judgment and Order are proper and must be upheld.

2. The Law Firm was and is in Possession of the Law Office.

Judge Reardon correctly concluded that the Law Firm was and is in possession of the Law Office. (R. 161). The Law Firm does not meaningfully challenge this conclusion and presents no argument or authority this conclusion is in any way erroneous. Based on that alone, this Court should uphold Judge Reardon’s conclusion that the Law Firm is in possession of the Law Office. *Jorgensen v. Coppedge*, 145 Idaho 524, 528, 181 P.3d 450, 454 (2008) (“We will not consider assignments of error not supported by argument and authority in the opening brief.” (internal quotation omitted)).

However, the Law Firm does make vague references to the PR having failed to name Vernon as a necessary party and repeats its claim from below that the Law Firm is merely using the Law Office “through” Vernon. Opening Brief at 5, 8, 10, 33. For that reason, the PR feels compelled to address that point out of an abundance of caution, inasmuch as it may be.

The Law Firm is in possession of the Law Office and repeatedly admits as much. (R. 4 (Law Firm’s Answer admitting that it is “operated by [Vernon] and through [Vernon’s] possession of the [Law Office]”)); *see also* Opening Brief at 5, 8, 10, 33 (admitting that the Law Firm is “present on the premises”). Any attempt to distinguish *using* the Law Office from *possession* is without merit. Actual possession of property is defined as “physical occupancy or control over property[.]” BLACK’S LAW DICTIONARY 1282 (9th ed. 2009). The Law Firm occupies and is present in the Law Office by virtue of physical occupancy. Judge Reardon was correct to reach this conclusion in his Order (R. 161) and there is no authority indicating otherwise.

B. The Law Firm Presents No Reason for Reversing the Order or Amended Judgment.

The Court need look no further than the above analysis to uphold Judge Reardon’s various decisions below. However, if the Court considers the voluminous and irrelevant argument presented by the Law Firm, nothing therein presents a valid reason to revisit any of Judge Reardon’s decisions.

1. The PR Has Never Asserted He Personally Owns Estate Property.

The Law Firm’s incorrect analysis can all be traced to one misunderstanding maintained by Vernon: he incorrectly believes the PR is asserting that the PR owns the Estate property personally, rather than in his capacity as personal representative of the Estate. Once this incorrect premise is assumed, it is a little easier to understand Vernon’s concern that he will be divested of his interest in Estate property, and a little easier to understand why Vernon thinks the Amended Judgment contains an inherent inconsistency.

Of course, the PR is not now asserting, and has never asserted, that he owns the Law Office—or any Estate property—in his personal capacity. Hillen brought this action in his capacity as the personal representative for the Estate so he could administer the Estate to the benefit of all the heirs, including Vernon. That clarification nullifies all of Vernon’s concerns. Vernon’s interest as an heir of the Estate does not affect the PR’s ejectment claim, and Vernon’s interest as an heir is unaffected by the outcome of this case.

2. Vernon’s Interest as an Heir of the Estate Does Not Defeat the PR’s Ejectment Claim.

The Law Firm (through Vernon) claims Vernon’s partial interest in the Law Firm became “vested” pursuant to Idaho Code Section § 15-3-101 upon Victoria’s death, and that that somehow supersedes the Rule 70 Judgment. Opening Brief at 8-11, 27-31. Not so. First, Section 15-3-101 does not mention permanently vesting interests, nor pre-emption of future orders or judgments. Instead, that section opens by expressly noting that the rights of heirs like Vernon “are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates.” I.C. § 15-3-101. To further emphasize this point, the section concludes by noting that estate property “is subject . . . to administration.” *Id.*

So, contrary to Vernon’s assertions, title to Estate property is not automatically vested with him, but is instead subject to the restrictions and limitations contained in the Uniform Probate Code and is otherwise subject to administration. The restrictions and limitations contemplated by the Uniform Probate Code include the personal representative’s “power over the title to property of the estate that an absolute owner would have,” (I.C. § 15-3-711) as well as

the personal representative's "right to . . . possession or control of, the decedent's property" and statutory authority to "maintain an action to recover possession of property or to determine the title thereto." I.C. § 15-3-709.

The comments to Section 15-3-711 make it clear that the power conferred on the PR is "the broadest possible 'power over title'" and state that the power is "conceived to embrace all possible transactions which might result in a conveyance or encumbrance of assets, or in a change of possession." (Emphasis added.) Those powers, statutorily granted to Hillen (and later passed to Elsaesser) as the personal representative, are precisely what empowers the PR to bring and maintain this ejectment action, and are precisely why Judge Reardon was correct to issue the Order and Amended Judgment.

Judge Hippler in the Gibson Case considered and rejected the applicability of the case law Vernon cites. As was true in Gibson Case, the PR's analysis on the subject adds little to Judge Hippler's considered reasoning and concise distillation:

The cases cited by Gibson [and the Law Firm here] do not compel a different result. They stand for the general rule that a decedent's property immediately descends to an heir upon the decedent's death, but neither one addressed the language in I.C. § 15-3-101 that an heir's right to a decedent's property "are subject to restrictions and limitations." See generally, *Ellmaker [v. Tabor]*, 160 Idaho 576, 377 P.3d 390 (2015); *Fairchild [v. Fairchild]*, 106 Idaho 147, 676 P.2d 722 [(1984)]. In those cases, there was no need to consider a personal representative's temporary power over the property, and its effect on an heir's right to immediate vesting of title. In *Ellmaker* "there was no probate of [the decedent's] estate." 160 Idaho at 580, 377 P.3d at 394, so there would not have been a personal representative. And although in *Fairchild* the estate had been probated, the issue in that case was whether one heir had adversely possessed the property or instead was a cotenant

with the other heirs by common inheritance. 106 Idaho at 150,676 P.2d at 725. It had nothing to do with the personal representative's temporary power to control the property. *See id.* Because neither *Ellmaker* or *Fairchild* addressed any sort of "restriction" mentioned in I.C. § 15-3-101, their holdings are no more than reiterations of the general rule. They do not help in deciding the scope of a personal representative's temporary statutory power over a decedent's property.

Judge Hippler's *Amended Memorandum Decision and Order Granting Plaintiff's Motion for Partial Judgment on the Pleadings*, Ada County Case No. CV01-19-10368 at 5-6 (October 3, 2019). The Law Firm presents no analysis or citation that alter the conclusion and the cases it cites do not govern the scope of a personal representative's power over a decedent's property.

3. Vernon's Interest in the Estate is Unaffected by and Irrelevant to This Case.

Vernon asserts multiple times that the PR is in breach of his fiduciary duties to the Estate's heirs. *See e.g.* Opening Brief at 9-11, 19, 33, 42-44. This is untrue, but also irrelevant as the Law Firm has no standing to bring such an action.

It is undisputed that the Law Firm is not an heir to the Estate and is owed no fiduciary duty by the PR. If Vernon feels Hillen was or the PR is in breach of his fiduciary duties, he is free to raise those concerns in the appropriate forum, which is not this case. This case is (or should have been) a simple action for ejectment comprising only three elements. That the PR is not administering the Estate properly, as alleged by Vernon, is not a defense to any of the elements of ejectment.

No possible outcome of this case could divest Vernon of the interest he has as an heir to the Estate. And, the Amended Judgment that issued in this case does not affect that status.

Rather, it merely required the Law Firm—who has no interest in the Estate—to vacate the Law Office. Vernon’s interests as an heir are unaffected, and the PR cannot use the Amended Judgment as a sword to claim personal ownership of the Law Office because the Amended Judgment says nothing of the sort.

V. REQUEST FOR ATTORNEYS’ FEES AND COSTS⁵

The PR is entitled to an award of attorneys’ fees and costs against the Law Firm on this appeal. The PR makes this request pursuant to I.A.R. 40 and Idaho Code § 12-121 (permitting an award of fees “when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation.”). At the risk of providing too fine a point on the matter, the Law Firm and its counsel have not presented any legitimate points of law or fact as to why this Court should reverse any of the trial court’s decisions/orders/judgments. The Law Firm simply repeats the same arguments to this Court that failed below. This Court should, therefore, assess fees (and costs) against the Law Firm and in favor of the PR.

⁵ The Law Firm does not claim an entitlement to attorneys’ fees in this appeal and should not receive them. The Law Firm appears to insinuate that, if it prevails, the District Court should award the Law Firm appellate attorneys’ fees after a trial. *See* Opening Brief at 48. It is also worth noting that the Law Firm’s argument in this regard refers to “VKSIII” and appears to be copied and pasted from the briefing in the Vernon III Case. Regardless, the Law Firm’s arguments are incorrect and it is not now and should not become the prevailing party. It is not entitled to fees.

CONCLUSION

For the reasons set forth above, the PR respectfully requests that this Court: (1) affirm Judge Reardon's Order and Amended Judgment; and (2) award the PR his attorneys' fees and costs on appeal and in the proceedings below.

Respectfully submitted on November 17, 2020.

GIVENS PURSLEY LLP

By /s/ Alexander P. McLaughlin
Randall A. Peterman – Of the Firm
Alexander P. McLaughlin – Of the Firm
Jack W. Relf – Of the Firm
Attorneys for Plaintiff-Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2020, I caused a true and correct copy of the foregoing **RESPONDENT'S BRIEF** to be served electronically through the iCourt system, which caused the following parties or counsel to be served by electronic means, as more fully reflected below:

Vernon K. Smith
vvs1900@gmail.com
*Attorneys for Defendants-Appellants Law Office
of Vernon K. Smith, LLC and Vernon K. Smith
Law, P.C.*

/s/ Alexander P. McLaughlin
Alexander P. McLaughlin